

Proposed Rule Court-Appointed Counsel for Children: Conflicts of Interest

(a) [Appointment of counsel (§ 317)]

- (1) When appointing counsel for children in a dependency case, the court may appoint a single attorney to represent multiple siblings if no actual conflict exists and no actual conflict is reasonably likely to arise within that group of siblings.
- (2) The court must appoint separate attorneys for siblings in the same dependency proceeding only if:
 - (A) An actual conflict of interest exists among those siblings; or
 - (B) Circumstances specific to the case present the reasonable likelihood that an actual conflict will arise among those siblings.

(b) [Declining or seeking to withdraw from appointment] In most instances, one attorney should represent multiple siblings in a case. In general, no one of the following circumstances, in and of itself, constitutes a sufficient basis for an attorney to decline or seek to withdraw from appointment on the grounds that an actual conflict of interest exists or is reasonably likely to arise:

- (1) There is a purely theoretical or abstract conflict of interest among the siblings;
- (2) The children express conflicting desires or objectives;
- (3) The children give different or contradictory accounts of the events if the issues involved are not material or their positions can be reconciled;
- (4) The children have differing desires or positions as to material issues, but at least one of these positions lacks legal or factual foundation;
- (5) The children have different permanent plans;
- (6) The children are of different ages;
- (7) Some of the children are more likely than others to be adoptable; or
- (8) The children have different parents.

(c) [Continuing representation if an actual conflict has arisen (§ 317)]

- (1) Once appointed, an attorney must continue to represent the children throughout the dependency proceedings unless relieved by the court on the substitution of other counsel or for cause.
- (2) The attorney must request to withdraw from the representation of some or all of the children if an actual conflict of interest arises among those siblings. A reasonable likelihood of an actual conflict does not necessitate withdrawal.
- (3) If an actual conflict of interest arises, the attorney may continue to represent siblings whose interests do not conflict only if:
 - (A) The attorney has successfully withdrawn from representation of all siblings whose interests conflict with those of the siblings the attorney continues to represent;
 - (B) The attorney has exchanged no confidential information with any siblings whose interests conflict with those of the siblings the attorney continues to represent; and
 - (C) Continued representation of one or more siblings would not otherwise prejudice the other sibling or siblings.

Advisory Committee Comment

Representation of multiple siblings in a dependency case is both permitted and encouraged. In *In re Celine R.* (2003) 31 Cal.4th 45, the California Supreme Court concluded that the juvenile court may appoint a single attorney to represent multiple siblings in a dependency case unless, at the time of the appointment, an actual conflict of interest exists among the siblings or it appears from circumstances specific to the case that an actual conflict is reasonably likely to arise. This rule is intended to clarify the implications of the *Celine R.* standard by (1) providing examples of circumstances in which an actual conflict of interest is *not* “reasonably likely” to arise and (2) explaining the circumstances in which, after an actual conflict has arisen, an attorney may continue to represent siblings whose interests do not conflict.